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ORIGINAL
IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

INTERNATIONAL MARKETING, INC., :

Plaintiff, :

v. :

COUNTERACT BALANCING :

BEADS, INC., :

Defendant. :

C.A. No. 1:CV 00-0697

(Magistrate Judge Smyser)

FILED
HARRISBURG, PA

NOV 27 2002

MARY E. D'ANDREA, CLERK

MOTION OF COUNTERACT BALANCING BEADS
FOR LEAVE TO FILE SUR REPLY BRIEF

Defendant Counteract Balancing Beads, Inc.

("CBB"), by and through its undersigned counsel, moves this Court for leave to file a Sur Reply Brief to respond to the Reply Brief and latest billing information newly submitted by International Marketing, Inc. ("IMI") with the Reply Brief that relates to IMI's Request For Attorney Fees. In support of this Motion, CBB states as follows:

1. By Memorandum and Order of March 28, 2002, the Court directed defendant CBB "to pay the plaintiff's costs and attorneys' fees associated with this motion." (See March 28 Order, at 24) [D.I. 110].

2. On October 17, 2002, IMI filed its Application For Award Of Attorneys' Fees with Exhibits A through D ("IMI's Application") [D.I. 124].

3. On November 8, 2002, CBB filed the *Responsive Brief Of Counteract Balancing Beads In Opposition To Application Of International Marketing For Award Of Attorneys' Fees* ("CBB's Response"), contending, *inter alia*, that CBB was prevented from reviewing and assessing the propriety of the requested attorney fees, including the attorney time and expenses of the Hahn Loeser & Parks, and compare such time and expenses with the attorney time and expenses of the Duane Morris law firm (later the Klett Rooney law firm) and the Cramer law firm, because no supporting information was provided by IMI relating to those time entries and expenses. [D.I. 126].

4. Thereafter, on November 18, 2002, IMI filed its Reply Memorandum In Support Of Application For Award Of Attorneys' Fees ("IMI's Reply") [D.I. 127].

5. With IMI's Reply, IMI has now provided a further affidavit and certain detailed billing records

from the Hahn Loeser law firm that were not provided with IMI's Application [D.I. 127].

6. IMI acknowledges that with the submission of this new information and billing records, CBB "should probably be given an opportunity" to review such records. (See IMI Reply, at 7).

7. CBB needs and requests the opportunity to review these newly submitted records with its counsel and in relation to the previously submitted records to determine whether and which objections can and should be made to the fees and expenses sought by IMI.

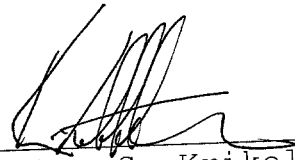
8. CBB will be prejudiced if it is not provided the opportunity to review and object, where appropriate, to the latest submissions of IMI. CBB could not previously review and object to any such information because IMI had not filed such records with its original Application.

9. Counsel for CBB certifies that they attempted to reach counsel for IMI by email to determine if IMI would oppose this motion. CBB has not received a response from IMI regarding any concurrence or objection

to this motion and accordingly presumes IMI will oppose this motion.

Accordingly, CBB respectfully requests leave of this Court to file a Sur Reply Brief to the Reply Memorandum of IMI and the newly submitted records attached to the Reply Memorandum. CBB requests that it be granted until December 10, 2002 to file and serve its Sur Reply Brief.

Respectfully submitted,



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Attorneys for Defendant
Counteract Balancing Beads

Dated: November 26, 2002

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion of Counteract Balancing Beads For Leave To File Sur Reply Brief was served upon the noted counsel of record by Federal Express on November 26, 2002.

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